

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jerald Boitnott,

Plaintiff,

v.

DQ Training Restaurants LLC d/b/a

DQ Grill & Chill and Richard J.

Kaufman,

Defendants.

Case No: 19-1186

NOTICE OF REMOVAL

Defendant DQ Training Restaurants LLC d/b/a DQ Grill & Chill, by counsel, and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes the above-entitled action, which is currently pending in the Fourth Judicial District Court, County of Hennepin, Minnesota, and states as follows:

Background

1. On April 3, 2019, DQ Training Restaurants LLC d/b/a DQ Grill & Chill received the summons and complaint of Plaintiff Jerald Boitnott (Exhibit 1).

Plaintiff's action is venued in the Fourth Judicial District Court, Hennepin County, Minnesota, and asserts claims under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

2. The Summons and Complaint constitute "all process, pleadings, and orders served upon" DQ Training Restaurants LLC d/b/a DQ Grill & Chill in this action to date. 28 U.S.C. § 1446(a).

Timeliness of Removal

3. DQ Training Restaurants LLC d/b/a DQ Grill & Chill received the summons and complaint on April 3, 2019. Therefore, this notice of removal is timely under 28 U.S.C. § 1446(b) because fewer than 30 days have passed since DQ Training Restaurants LLC d/b/a DQ Grill & Chill receipt of Plaintiff's summons and complaint.

4. Co-defendant Richard J. Kaufman has not been served.

5. Co-defendant Richard J. Kaufman has consented to removal. See Aff. Frasier.

Removal Jurisdiction

6. This action is properly removable under 28 U.S.C. § 1441 because this Court has original jurisdiction of this case under 28 U.S.C. § 1331, which provides in pertinent part: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

7. Specifically, Plaintiff's complaint alleges that DQ Training Restaurants LLC d/b/a DQ Grill & Chill violated 42 U.S.C. § 12182(a) by failing to make its property fully accessible to persons with disabilities. Plaintiff's complaint seeks injunctive relief under 42 U.S.C. § 12188.

8. Because Plaintiff's claims are brought under the ADA, this is a civil action "arising under the Constitution, laws, or treaties of the United States" pursuant to Section 1331, and removal is appropriate pursuant to Sections 1441

and 1446.

9. Removal to this Court is proper as the United States District Court for the District of Minnesota embraces Hennepin County, Minnesota, where the state court action was venued.

Notice to State Court and Plaintiff

10. Pursuant to 28 U.S.C. § 1446(d), DQ Training Restaurants LLC d/b/a DQ Grill & Chill is promptly providing written notice of this removal to Plaintiff and will promptly file a copy of this Notice of Removal with the Hennepin County Clerk of Courts.

WHEREFORE, Defendant DQ Training Restaurants LLC d/b/a DQ Grill & Chill respectfully requests that the above-entitled action be removed from the Fourth Judicial District Court, County of Hennepin, Minnesota to this Court.

Dated: May 2, 2019

RUBRIC LEGAL LLC

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